

SENATE BILL No. 43

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-42-4-7.

Synopsis: Child seduction. Makes it child seduction, a Level 6 felony, for a law enforcement officer who is at least five years older than a child who is: (1) at least 16 years of age; and (2) less than 18 years of age; to fondle or touch the child with the intent to arouse or satisfy the sexual desires of either the child or the law enforcement officer. Makes it child seduction, a Level 5 felony, if the law enforcement officer engages in sexual intercourse or other sexual conduct with the child. Reconciles technical and substantive conflicts between HEA 1006-2013 (the 2013 criminal code revision bill) and other bills concerning criminal law.

Effective: July 1, 2014.

Yoder

January 7, 2014, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 43

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-42-4-7, AS AMENDED BY P.L.208-2013,
2 SECTION 8, AND AS AMENDED BY P.L.158-2013, SECTION 443,
3 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) As used in this section,
5 "adoptive parent" has the meaning set forth in IC 31-9-2-6.
6 (b) As used in this section, "adoptive grandparent" means the parent
7 of an adoptive parent.
8 (c) As used in this section, "charter school" has the meaning set
9 forth in IC 20-18-2-2.5.
10 (d) As used in this section, "child care worker" means a person who:
11 (1) provides care, supervision, or instruction to a child within the
12 scope of the person's employment in a shelter care facility;
13 (2) is employed by a:
14 (A) school corporation;
15 (B) charter school;
16 (C) nonpublic school; or



(D) special education cooperative;
attended by a child who is the victim of a crime under this
chapter; or

(3) is:

(A) affiliated with a:

- (i) school corporation;
- (ii) charter school;
- (iii) nonpublic school; or
- (iv) special education cooperative;

attended by a child who is the victim of a crime under this
chapter, regardless of how or whether the person is
compensated;

(B) in a position of trust in relation to a child who attends the
school or cooperative;

(C) engaged in the provision of care or supervision to a child
who attends the school or cooperative; and

(D) at least four (4) years older than the child who is the
victim of a crime under this chapter.

The term does not include a student who attends the school or
cooperative.

(e) As used in this section, "custodian" means any person who
resides with a child and is responsible for the child's welfare.

(f) As used in this section, "mental health professional" means:

- (1) a mental health counselor licensed under IC 25-23.6-8.5;*
- (2) a psychologist; or*
- (3) a psychiatrist.*

~~(f)~~ (g) As used in this section, "military recruiter" means a member
of the armed forces of the United States (as defined in IC 20-33-10-2)
or the Indiana National Guard whose primary job function,
classification, or specialty is recruiting individuals to enlist with the
armed forces of the United States or the Indiana National Guard.

~~(g)~~ (h) As used in this section, "nonpublic school" has the meaning
set forth in IC 20-18-2-12.

*(i) For purposes of this section, a person has a "professional
relationship" with a child if:*

(1) the person:

- (A) has a license issued by the state or a political subdivision
on the basis of the person's training and experience that
authorizes the person to carry out a particular occupation; or*
- (B) is employed in a position in which counseling, supervising,
instructing, or recruiting children forms a significant part of
the employment; and*



(2) the person has a relationship with a child that is based on the person's employment or licensed status as described in subdivision (1).

The term includes a relationship between a child and a mental health professional or military recruiter. The term does not include a coworker relationship between a child and a person described in subdivision (1)(B).

~~(h)~~ (j) As used in this section, "school corporation" has the meaning set forth in IC 20-18-2-16.

~~(i)~~ (k) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1.

~~(j)~~ (l) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

~~(k)~~ (m) If a person who:

(1) is at least eighteen (18) years of age; and

~~(2) is:~~

~~(A) the:~~

~~(i) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or~~

(2) is the:

(A) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or

(B) child care worker for;

~~(ii) child care worker for; or~~

~~(B) a military recruiter who is attempting to enlist;~~

a child at least sixteen (16) years of age but less than eighteen (18) years of age;

~~fondles or touches the child engages with the child in sexual intercourse, deviate other sexual conduct (as defined in IC 35-31.5-2-94 IC 35-31.5-2-221.5), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction. a felony. a Level 6 felony. However, the offense is a Level 5 felony if the person engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child.~~

(n) A person who:

(1) has or had a professional relationship with a child at least sixteen (16) years of age but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) years of age but less than eighteen (18) years of age;

(2) may exert undue influence on the child because of the person's



1 *current or previous professional relationship with the child; and*
 2 *(3) uses or exerts the person's professional relationship to engage*
 3 *in sexual intercourse, ~~deviate~~ other sexual conduct (as defined*
 4 *in IC 35-31.5-2-221.5), or any fondling or touching with the*
 5 *child with the intent to arouse or satisfy the sexual desires of the*
 6 *child or the person;*
 7 *commits child seduction.*

8 **(o) A law enforcement officer who:**

9 **(1) is at least five (5) years older than a child who is:**

10 **(A) at least sixteen (16) years of age; and**

11 **(B) less than eighteen (18) years of age; and**

12 **(2) engages with the child in:**

13 **(A) sexual intercourse;**

14 **(B) other sexual conduct (as defined in IC 35-31.5-2-221.5);**

15 **or**

16 **(C) any fondling or touching with the child with the intent**
 17 **to arouse or satisfy the sexual desires of the child or the**
 18 **law enforcement officer;**

19 **commits child seduction.**

20 ~~(p)~~ **(p)** *In determining whether a person used or exerted the*
 21 *person's professional relationship with the child to engage in sexual*
 22 *intercourse, ~~deviate~~ other sexual conduct (as defined in*
 23 **IC 35-31.5-2-221.5), or any fondling or touching with the intent to**
 24 *arouse or satisfy the sexual desires of the child or the person under*
 25 *subsection (n), the trier of fact may consider one (1) or more of the*
 26 *following:*

27 *(1) The age difference between the person and the child.*

28 *(2) Whether the person was in a position of trust with respect to*
 29 *the child.*

30 *(3) Whether the person's conduct with the child violated any*
 31 *ethical obligations of the person's profession or occupation.*

32 *(4) The authority that the person had over the child.*

33 *(5) Whether the person exploited any particular vulnerability of*
 34 *the child.*

35 *(6) Any other evidence relevant to the person's ability to exert*
 36 *undue influence over the child.*

37 ~~(q)~~ **(q)** *Child seduction under this section is:*

38 *(1) a ~~Class D~~ Level 6 felony if the person or law enforcement*
 39 **officer engaged in any fondling or touching with the intent to**
 40 **arouse or satisfy the sexual desires of:**

41 **(A) the child; or**

42 **(B) the person or law enforcement officer; and**



- 1 (2) a ~~Class C~~ **Level 5** felony if the person **or law enforcement**
2 **officer** engaged in sexual intercourse or ~~deviate~~ **other** sexual
3 conduct **(as defined in IC 35-31.5-2-221.5)** with the child.

